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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/024,496
Filing Date: December 21, 2001
Appellant(s): RUBINSTENN ET AL.

Kenie Ho
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 10/14/2009 appealing from the Office action mailed 01/29/2009.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

Maloney et al.	WO 01/18674 A2	15 March 2001
Fox et al.	US 5,796,932	18 August 1998
Anderson	US 2002/0082869 A1	27 June 2002
Farchione	US 2002/0059248 A1	16 May 2002
Ogilvie et al.	Why Women Wear Lipstick: Preliminary Findings. Internet printout.	

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections under 35 USC § 101 have been withdrawn due to the Applicant's amendment after final of 04/09/2009.

Claim Rejections - 35 USC § 102

The following is a quotation of 35 U.S.C. 102(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 25 and 26 are rejected under 35 U.S.C. 102(a) as being anticipated by Maloney et al. (WO 01/18674).

Maloney et al. (Maloney) teaches a method for providing a customized product combination to a consumer, comprising:

Claim 25. Obtaining personal information about a consumer, the personal information including at least demographic information about the consumer, the demographic information reflecting a geographic area location of the subject (delivering a product to the customer indicates obtaining a geographical location of the consumer) (P. 6, L. 30 – P. 7, L. 3; P. 11, L. 18); generating a list of a plurality of cosmetic products for the consumer (P. 7, L. 13-16); receiving from the subject a request for cosmetic advice (P. 2, L. 7-8); accessing local information (water hardness, pH level) for the geographic area (P. 10, L. 7-8; P. 11, L. 11-12); and generating at least one recommendation for use of at least one cosmetic product on the list, the at least one recommendation being a function of the personal information and the local information (P. 7, L. 15-16; P. 16, L. 2-6; P. 20, L. 17-19; P. 6, L. 15-17; Fig. 17).

Claim 26. Said method, wherein receiving the request occurs via a network and in at least one location remote from a location of the consumer (P. 4, L. 7-10).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject

matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-9, 11-13, 17, 18, 20-24, 27, 30-32 and 34-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maloney in view of Fox et al. (US 5,796,932).

Maloney teaches a computer-implemented method and system for providing a customized product combination to a consumer, said system comprising a processor and a memory for storing personal information about a customer and an executable code for conducting said method (P. 18, L. 1-34), said method comprising:

Claims 1 and 27. Obtaining personal information about a consumer, the personal information including at least demographic information about the consumer, the demographic information reflecting a geographic area location of the subject (delivering a product to the customer indicates obtaining a geographical location of the consumer) (P. 6, L. 30 – P. 7, L. 3; P. 11, L. 18); determining local information (environmental data) corresponding to the demographic information (P. 10, L. 7-8; P. 11, L. 11-12); generating and presenting at least one recommendation for use of at least one cosmetic product based on at least the personal information and the local information (P. 7, L. 14-15; P. 7, L. 11-13).

Maloney does not specifically teach that said determined local information, which corresponds to the demographic information, is determined based on said demographic information.

Fox et al. (Fox) teaches a computer-implemented method and system for analysis of weather impact on a retail, personal care industry (C. 7, L. 65 - C. 8, L. 1), including collecting demographic (location) information about consumers (C. 9, L. 1-2, 19-22), and determining local weather information based on said demographic (location) information (C. 13, L. 3-8). Furthermore, Fox teaches that so as weather is a local phenomenon, determining and predicting local weather conditions based on determined location information can predict the impact of weather on sales of goods in said determined location (C. 4, L. 10-11, 58-61).

Therefore, it would have been obvious to one having ordinary skill in art the time the invention was made to modify Maloney to include determining and predicting local weather conditions based on local information, as disclosed in Fox, because it would advantageously allow to utilize local actual and forecasted weather information (e.g., temperature and humidity) in planning of sales and advertising of personal care products, thereby maximize profits.

Claim 2. Fox teaches said method and system, wherein said local information includes weather forecast (C. 13, L. 3-8).

Claim 3. Obtaining information about recent purchases of cosmetic products from each consumer, and having address information of said each consumer indicates obtaining data on cosmetic usage of others located in the geographic area of the subject (Maloney; P. 12, L. 17-18).

Claim 4. Fox teaches said method and system, wherein said local information includes weather forecast including temperature, precipitation and snowfall (C. 6, L. 13-14), thereby indicating *air quality data*.

Claims 5 and 11. Fox teaches said method and system, wherein said local information includes historical and actual weather conditions and predicted weather forecast including temperature, precipitation and snowfall (C. 6, L. 13-14), thereby indicating *climate data for the geographic area*.

Claims 6. Obtaining local water hardness and pH level information indicates obtaining ecological data for the geographic area of the subject (Maloney; P. 10, L. 7-8; P. 11, L. 11-12).

Claim 7. Said method, wherein the personal information further includes lifestyle (Maloney; P. 7, L. 2).

Claim 8. Said method, wherein the lifestyle information includes at least one of fashion preferences, clothing color preferences, and cosmetic preferences (Maloney; P. 11, L. 27-30).

Claim 9. Said method, wherein the physical characteristics information includes at least one of age, a skin condition, skin tone, a propensity to tan, hair color, and facial feature characteristics (Maloney; P. 7, L. 1-3).

Claim 12. Receiving over a network, at a site remote from the subject, the personal information about the subject, and transmitting the recommendation to the consumer over the network (Maloney; P. 4, L. 7-10).

Claim 13. Generating recommendation based on physical characteristics information, the local information, and the variable preference information (Maloney; P. 4, L. 18-23).

Claims 17-18. Accessing the node *prior to* the time of intended cosmetic application (See claim 1). Information as to *immediately prior, or in an evening before, or in a day of intended cosmetic application* is non-functional language and given no patentable weight. Non-functional descriptive material cannot render non-obvious an invention that would otherwise have been obvious. See: *In re Gulack* 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983) *In re Dembiczak* 175 F.3d 994, 1000, 50 USPQ2d 1614, 1618 (Fed. Cir. 1999). The step of "accessing the node prior to the time of intended cosmetic application" would be performed regardless the actual time of intended cosmetic application. Furthermore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Maloney in view of Fox to include that said "accessing the node *prior to* the time of intended cosmetic application" includes *immediately prior, or in an evening before, or in a day of intended cosmetic application*, or in any other day prior to the intended cosmetic application because it would advantageously allow the subject to do it based on her/his schedule and convenience.

Claim 20. Obtaining information about recent purchases of cosmetic products from a consumer indicates receiving an identification of products at the subject's disposal (P. 12, L. 17-18).

Claim 21. Said method, wherein the physical characteristics information includes at least one of color, tone, texture, elasticity, oiliness, and pH of at least one of the subject's hair and skin (Maloney; P. 11, L. 9-10).

Claims 22-24. Same reasoning as applied to claim 1.

Claim 30. Maloney teaches said system for providing beauty advice, the system comprising: a memory including a program that obtains personal information about a customer, the personal information including at least demographic information about the customer, the demographic information reflecting a geographic area location of the subject and geographic area location information of the consumer (P. 6, L. 30 – P. 7, L. 3; P. 11, L. 18); determines local information corresponding to the demographic information (P. 10, L. 7-8; P. 11, L. 11-12); generates and presents at least one recommendation for use of at least one cosmetic product based on at least one of the personal information and the local information (P. 7, L. 14-15; P. 16, L. 2-6; P. 20, L. 17-19; P. 6, L. 15-17; Fig. 17); and a processor that runs the program (P. 14, L. 3-12).

Maloney does not specifically teach that said determined local information, which corresponds to the demographic information, is determined based on said demographic information.

Fox teaches a computer-implemented method and an interface for analysis of weather impact on a retail, personal care industry (C. 7, L. 65 - C. 8, L. 1), including collecting demographic (location) information about consumers (C. 9, L. 1-2, 19-22), and determining local weather information based on said demographic (location)

information (C. 13, L. 3-8). Furthermore, Fox teaches that weather is a local phenomenon rather than a national phenomenon, and providing interface which determines and predicts local weather conditions based on determined location information can predict the impact of weather on sales of goods in said location (C. 4, L. 10-11, 58-61).

Therefore, it would have been obvious to one having ordinary skill in art the time the invention was made to modify Maloney to include predicting local weather conditions based on local information functionality, as disclosed in Fox, because it would advantageously allow to utilize local actual and forecasted weather conditions (e.g., temperature and humidity) in planning of sales and advertising of personal care products, thereby maximize profits.

Claim 31. Maloney teaches a computer-readable medium containing instructions for causing a computer to perform said computer-implemented method for providing beauty advice, the method comprising: obtaining personal information about a customer, the personal information including at least demographic information about the customer, the demographic information reflecting a geographic area location of the subject and geographic area location information of the consumer (P. 6, L. 30 – P. 7, L. 3; P. 11, L. 18); determining local information corresponding to said local information (P. 10, L. 7-8; P. 11, L. 11-12); generating and presenting at least one recommendation for use of at least one cosmetic product based on at least one of the personal information

and the local information (P. 7, L. 14-15; P. 16, L. 2-6; P. 20, L. 17-19; P. 6, L. 15-17; Fig. 17).

Maloney does not specifically teach that said determined local information, which corresponds to the demographic information, is determined based on said demographic information.

Fox teaches a computer-implemented method and an interface for analysis of weather impact on a retail, personal care industry (C. 7, L. 65 - C. 8, L. 1), including collecting demographic (location) information about consumers (C. 9, L. 1-2, 19-22), and determining local weather information based on said demographic (location) information (C. 13, L. 3-8). Furthermore, Fox teaches that weather is a local phenomenon rather than a national phenomenon, and providing interface which determines and predicts local weather conditions based on determined location information can predict the impact of weather on sales of goods in said location (C. 4, L. 10-11, 58-61).

Therefore, it would have been obvious to one having ordinary skill in art the time the invention was made to modify Maloney to include determining and predicting local weather conditions based on local information, as disclosed in Fox, because it would advantageously allow to utilize local actual and forecasted weather conditions (e.g., temperature and humidity) in planning of sales and advertising of personal care products, thereby maximize profits.

Claim 32. Maloney teaches said method for providing a customized product combination to a consumer, comprising:

maintaining a plurality of consumer categories (P. 6, L. 32 – P. 7, L. 11; P. 9, L. 33-35); obtaining information identifying a geographic area where beauty advice is to be dispensed (delivering a product to the customer indicates obtaining a geographical location of the consumer) (P. 6, L. 30 – P. 7, L. 3; P. 11, L. 18); obtaining local information corresponding to the geographic area (P. 10, L. 7-8; P. 11, L. 11-12); generating and presenting a plurality of differing cosmetic product usage recommendation, each recommendation being a function of the local information and at least one of the plurality of categories (P. 7, L. 11-15; P. 16, L. 2-6; P. 20, L. 17-19; P. 6, L. 15-17; Fig. 17).

Maloney does not specifically teach that said local information includes weather forecast for the geographic area.

Fox teaches a computer-implemented method and an interface for analysis of weather impact on a retail, personal care industry (C. 7, L. 65 - C. 8, L. 1), including collecting location information about consumers (C. 9, L. 1-2, 19-22), and determining local weather information based on said location information (C. 13, L. 3-8). Furthermore, Fox teaches that weather is a local phenomenon rather than a national phenomenon, and providing interface which determines and predicts local weather conditions based on determined location information can predict the impact of weather on sales of goods in said local area (C. 4, L. 10-11, 58-61).

Therefore, it would have been obvious to one having ordinary skill in art the time the invention was made to modify Maloney to include that said local information includes weather forecast for the geographic area, as disclosed in Fox, because it would advantageously allow to utilize forecasted weather conditions (e.g., temperature and humidity) in planning of sales and advertising of personal care products, thereby maximize profits.

Furthermore, Maloney teaches:

Claim 34. Presenting includes organizing recommendations by category (P. 7, L. 5-13).

Claim 35. Obtaining information about recent purchases of cosmetic products from each consumer, and having address information of said each consumer indicates obtaining data on cosmetic usage of others located in the geographic area of the subject (P. 12, L. 17-18).

Claim 36. Said method, wherein the personal information further includes lifestyle (P. 7, L. 2).

Claim 37. Said method, wherein the physical characteristics information includes at least one of age, a skin condition, skin tone, a propensity to tan, hair color, and facial feature characteristics (P. 7, L. 1-3).

Claim 38. See reasoning applied to claim 32.

Claim 39. Generating recommendation based on physical characteristics information, the local information, and the variable preference information (P. 4, L. 18-23).

Claim 40. Said method conducted in a network environment (P. 16, L. 20-34).

Claim 41. Maloney teaches said method for providing a customized product combination to a consumer, comprising:

obtaining demographic information about the consumer (delivering a product to the customer indicates obtaining a geographical location of the consumer) (P. 6, L. 30 – P. 7, L. 3; P. 11, L. 18); determining local information corresponding to said obtained demographic information (P. 10, L. 7-8; P. 11, L. 11-12); generating and presenting at least one recommendation for use of at least one cosmetic product in the geographic area based on the information (P. 7, L. 3-15; P. 16, L. 2-6; P. 20, L. 17-19; P. 6, L. 15-17; Fig. 17).

Maloney does not specifically teach that said local information is determined by manipulating said received demographic information.

Fox teaches a computer-implemented method and an interface for analysis of weather impact on a retail, personal care industry (C. 7, L. 65 - C. 8, L. 1), including collecting demographic (location) information about consumers (C. 9, L. 1-2, 19-22), and determining local weather information by manipulating said demographic (location) information (C. 13, L. 3-8; C. 18, L. 56 – C. 19, L. 5). Furthermore, Fox teaches that

weather is a local phenomenon rather than a national phenomenon, and providing interface which determines and predicts local weather conditions based on determined location information can predict the impact of weather on sales of goods in said local area (C. 4, L. 10-11, 58-61).

Therefore, it would have been obvious to one having ordinary skill in art the time the invention was made to modify Maloney to include said determining local weather conditions by manipulating said local information, as disclosed in Fox, because it would advantageously allow to utilize local actual and forecasted weather conditions (e.g., temperature and humidity) in planning of sales and advertising of personal care products, thereby maximize profits.

Claim 42. Said method conducted in a network environment (Maloney; P. 16, L. 20-34).

Claim 43. Maloney teaches said method for providing a customized product combination to a consumer, comprising:

obtaining personal information about a consumer, the personal information including at least demographic information about the consumer, the demographic information reflecting a geographic area location of the consumer (delivering a product to the customer indicates obtaining a geographical location of the consumer) (P. 6, L. 30 – P. 7, L. 3; P. 11, L. 18); determining local information corresponding to the demographic information (P. 10, L. 7-8; P. 11, L. 11-12); generating at least one

cosmetic analysis based on at least one of the personal information and the local information and presenting the at least one cosmetic analysis (P. 7, L. 11-15; P. 16, L. 2-6; P. 20, L. 17-19; P. 6, L. 15-17; Fig. 17).

Maloney does not specifically teach that said determined local information is determined based on said demographic information.

Fox teaches a computer-implemented method and an interface for analysis of weather impact on a retail, personal care industry (C. 7, L. 65 - C. 8, L. 1), including collecting demographic (location) information about consumers (C. 9, L. 1-2, 19-22), and determining local weather information based on said demographic (location) information (C. 13, L. 3-8). Furthermore, Fox teaches that weather is a local phenomenon rather than a national phenomenon, and providing interface which determines and predicts local weather conditions based on determined location information can predict the impact of weather on sales of goods in said local area (C. 4, L. 10-11, 58-61).

Therefore, it would have been obvious to one having ordinary skill in art the time the invention was made to modify Maloney to include determining and predicting local weather conditions based on local information, as disclosed in Fox, because it would advantageously allow to utilize local actual and forecasted weather conditions (e.g., temperature and humidity) in planning of sales and advertising of personal care products, thereby maximize profits.

Claims 44, 46 and 47. Same reasoning as applied to claim 43.

Claim 45. Conducting said method in a network environment (Maloney; P. 16, L. 20-34).

Claim 48. Fox teaches determining local information by manipulating the demographic information (C. 13, L. 3-8; C. 18, L. 56 – C. 19, L. 5).

Claim 49. Maloney teaches said method for providing a customized product combination to a consumer, comprising:

obtaining personal information about a consumer, the personal information including at least demographic information about the consumer, the demographic information reflecting a geographic area location of the consumer (delivering a product to the customer indicates obtaining a geographical location of the consumer) (P. 6, L. 30 – P. 7, L. 3; P. 11, L. 18); determining local information corresponding to the demographic information (P. 10, L. 7-8; P. 11, L. 11-12); generating and presenting at least one recommendation for use of at least one cosmetic product based on at least one of the personal information and the local information (P. 7, L. 11-15; P. 16, L. 2-6; P. 20, L. 17-19; P. 6, L. 15-17; Fig. 17).

Maloney does not specifically teach that said determined local information is determined based on said demographic information and historical information associated with said area.

Fox teaches a computer-implemented method and an interface for analysis of weather impact on a retail, personal care industry (C. 7, L. 65 - C. 8, L. 1), including collecting demographic (location) information about consumers (C. 9, L. 1-2, 19-22), providing a historical weather information for various regions; accessing and determining local weather information based on said demographic (location) information and historical weather information for said geographical region (C. 13, L. 3-8).

Furthermore, Fox teaches that weather is a local phenomenon rather than a national phenomenon, and providing interface which determines and predicts local weather conditions based on determined location information can predict the impact of weather on sales of goods in the local area (C. 4, L. 10-11, 58-61).

Therefore, it would have been obvious to one having ordinary skill in art the time the invention was made to modify Maloney to include determining local information based on said demographic information and historical information associated with said area, as disclosed in Fox, because it would advantageously allow to utilize local actual and historical weather conditions (e.g., temperature and humidity) in planning of sales and advertising of personal care products, thereby maximize profits.

Claim 50. Fox teaches projecting local (weather) information based on the demographic (geographical) information and the historical (weather) information (C. 6, L. 12).

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Maloney et al. in view of Fox et al. and further in view of Anderson (US 2002/0082869).

Claim 10. Maloney in view of Fox teaches all the limitations of claim 10, except that family history information includes historical physical characteristics information about relatives of the consumer.

Anderson teaches a method for providing and updating customized health care over the Internet, wherein personal data of an individual includes age and medical history of the individual's relatives [0016].

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Maloney in view of Fox to include that said family history information includes historical physical characteristics information about relatives of the consumer, as disclosed in Anderson, because it would advantageously allow to determine and exclude certain beauty product ingredients which may cause negative health conditions or even diseases to which the consumer may have a predisposition.

Claims 14-16, 28, 29 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maloney et al. in view of Fox et al. and further in view of Farchione (US 2002/0059248).

Claim 14. Maloney in view of Fox teaches said method, wherein the variable preference information includes an identification of clothing that the subject intends to wear (Maloney; P. 7, L. 16-19). Maloney and Fox does not specifically teach that said recommendation contains a suggestion to use at least one product complementary to the identified clothing.

Fachione teaches a method and system for determining proper color for makeup and clothing, including suggesting to use at least one cosmetic product complementary to the desired fashion outlook [0023]; [0010].

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Maloney in view of Fox to include suggesting to use at least one cosmetic product complementary to the desired fashion outlook, as disclosed in Fachione, because it would advantageously allow to provide customers with a product most suitable for customer's physical characteristics, as specifically taught in Fachione [0005].

Claim 15. Said method, wherein the identification of clothing is a color of clothing (Fachione; [0010]). The motivation to combine the references would be providing customers with a product most suitable for customer's physical characteristics.

Claim 16. Said method, wherein the product is a cosmetic product for adding color to a face of the subject (Fachione; [0003]). The motivation to combine the references would be providing customers with a product most suitable for customer's physical characteristics.

Claim 28. Fachione teaches generating a suggestion for clothing based on the obtained information [0027]. The motivation to combine the references would be providing customers with a product most suitable for customer's physical characteristics.

Claim 29. Fachione teaches that said cosmetic product is chosen from makeup and hair product [0019]. The motivation to combine the references would be providing customers with a product most suitable for customer's physical characteristics.

Claim 33. Fachione teaches presenting the recommendations to a beauty consultant [0003]. The motivation to combine the references would be presenting most suitable cosmetic products for those customers who prefer to interact with a beauty consultant.

Claim 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maloney et al. in view of Fox et al. and further in view of Official Notice.

Claim 19. Maloney in view of Fox teaches all the limitations of claim 19, except *suggesting* that the consumer maintain a stock of the plurality of cosmetic products.

Official notice is taken that it is well known that a plurality of consumers have a habit to use cosmetic product every day (See, for example, Ogilvie et al.: Why Women Wear Lipstick: Preliminary Findings; page 4, 5th paragraph).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Maloney in view of Fox to include suggesting

that the consumer maintain a stock of the plurality of cosmetic products, because it would advantageously allow the consumer never run out of cosmetic products especially when the consumer needs them the most.

(10) Response to Argument

A. Claims 1-11, 13-16, 18-25, 32-39, 41, 43, 44, and 46-50

Applicant argues that the Rejection Under 35 U.S.C. § 101 Should Be Reversed because the claims are tied to another statutory class and meet Bilski's machine-or-transformation test.

Claim Rejections Under 35 U.S.C. § 101 have been withdrawn.

B. 1. Claims 25 and 26

Argument:

The Rejection Under 35 U.S.C. § 102(a) Should Be Reversed.

a. **Applicant argues** that *Testing for environmental information, as disclosed by Maloney, is not the same as and is not consistent with "accessing local information for the geographic area."*

In response to this argument it is noted that Applicants' Specification defines "accessing local information for the geographic area" as follows (paragraph 0027 as published US 2003/0064350 A1) (emphases added):

The local information may be determined in a variety of ways, including electronically and manually.

Maloney teaches (emphases added):

the collection of profiling data about a consumer comprises providing the consumer a test kit. ... Preferably, such a test kit would also comprise additional environmental tests (such as water hardness, water pH, etc.) which effects the performance of beauty care products. ... The test kit is delivered to the consumer and the consumer then provides the results and input from such test..." (P. 11, L. 6-14),

and:

"Additional consumer profiling data is identified to customize the selected product to meet the consumer's physiological conditions and external conditions (such as water hardness, etc.)" (P. 10, L. 6-8).

Examiner stipulates that Maloney's teaching of receiving from the consumer the results of the environmental tests such as water hardness, water pH, etc., said results obtained at a place of presence of the consumer to whom the test kit is delivered reads on "accessing local information for the geographic area" as recited in the claims and as defined in Applicants' Specification.

b. **Applicant argues** that Maloney fails to disclose "generating at least one recommendation for use of at least one cosmetic product on the list, the at least one recommendation being a function of the personal information of the subject and the local information,"

In response to this argument it is noted that Maloney teaches providing the consumer with customized beauty care products, including shampoo, conditioner, lotion, facial cleanser, etc. (P. 7, L. 16, 24-26) based on obtained personal information about a consumer, the personal information including at least demographic information about the consumer, the demographic information reflecting a geographic area location of the subject (P. 6, L. 30 – P. 7, L. 3; P. 11, L. 18) and (P. 7, L. 11-15; P. 16, L. 2-6; P. 20, L. 17-19; P. 6, L. 15-17; Fig. 17).

Examiner stipulates, that under "broadest reasonable interpretation" providing shampoo or lotion selected based on obtained personal information about the consumer constitutes "generating recommendations" for use of said products. Furthermore, Maloney teaches (P. 16, L. 1-6) (emphases added):

Preferably, the consumer profile is continually updated during the consumer's interactions with the customized user interface. A list of recommended product choices which correspond to the updated consumer profile is then provided (40) to the consumer. The list of recommended product choices is compiled by a retrieving from a data repository, a list of predetermined product choices corresponding to the particular product category.

C.

Argument:

The Rejection Under 35 U.S.C. § 103(a) Based On Maloney and Fox
Should Be Reversed.

1. Claims 1-9, 11-13, 17, 18, 20-24, 30, 31, and 48

a. **Applicant argues** that *Maloney* and *Fox* fail to teach or suggest, separately or in combination, generating at least one recommendation for use of at least one cosmetic product based on at least personal information and local information, which is determined based on demographic information.

In response to this argument it is noted that *Maloney* teaches: obtaining personal information about a consumer including a geographic area location of the subject (P. 6, L. 30 – P. 7, L. 3; P. 11, L. 18); determining local information (environmental data) *corresponding to* the demographic information (P. 10, L. 7-8; P. 11, L. 11-12); generating and presenting at least one recommendation for use of at least one cosmetic product based on at least the personal information and the local information (providing shampoo or lotion indicates “generating recommendations” for use of said products) (P. 7, L. 14-15; P. 7, L. 11-13, 16, 24-26).

Fox was applied to show determining local (weather) information based on demographic (geographical) information. Specifically, *Fox* teaches a computer-

implemented method and system for analysis of weather impact on a retail, personal care industry (C. 7, L. 65 - C. 8, L. 1), including collecting demographic (location) information about consumers (C. 9, L. 1-2, 19-22), and determining local weather information based on said demographic (location) information (C. 13, L. 3-8).

Furthermore, Examiner maintains, that under "broadest reasonable interpretation" providing shampoo or lotion selected based on obtained personal information about the consumer, as disclosed in Maloney, constitutes "generating recommendations" for use of said products (P. 7, L. 11-15; P. 20, L. 17-19; P. 6, L. 15-17; Fig. 17). Furthermore, Maloney teaches (P. 16, L. 1-6) (emphases added):

Preferably, the consumer profile is continually updated during the consumer's interactions with the customized user interface. A list of recommended product choices which correspond to the updated consumer profile is then provided (40) to the consumer. The list of recommended product choices is compiled by a retrieving from a data repository, a list of predetermined product choices corresponding to the particular product category.

Further, **Applicant argues** that there is no suggestion to combine the references.

In response to this argument Examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir.

1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, both references relate to providing personal care products or services to consumers based on demographic information. So as weather is a local phenomenon, determining and predicting local weather conditions based on determined location information can predict the impact of weather on sales of goods in said determined location (Fox; C. 4, L. 10-11, 58-61). As such, the motivation to combine references to include determining and predicting local weather conditions based on local information, as disclosed in Fox, would be utilizing local actual and forecasted weather information (e.g., temperature and humidity) in planning of sales and advertising of personal care products to maximize profits.

2. Claim 27

a. **Applicant argues** that Maloney and Fox fail to teach or suggest "memory for storing personal information about a subject", "memory for storing a program that accesses local information . . . and generates at least one recommendation for use of at least one cosmetic product, the at least one recommendation being a function of the personal information of the subject and the local information" and "a processor that runs the program."

In response to this argument it is noted, that Maloney explicitly teaches this feature. Specifically, Maloney teaches a computer-readable storage medium containing

computer executable code for instructing a computer to perform the following steps: collecting consumer profiling data about a consumer, said data including personal data and local data, and determining a customized beauty care product based on said personal data and local data (P. 18, L. 1-34). Specifically, Maloney teaches:

Another embodiment of the present invention comprises a computer-readable storage medium containing computer executable code for instructing a computer to perform the following steps: collecting consumer profiling data about a consumer; determining a consumer profile category corresponding to the consumer profiling data; providing the consumer a list of one or more products that correspond to the consumer profile; receiving from the consumer a product choice selected from the list; identifying additional consumer profiling data from the consumer which corresponds to the selected product choice; and providing the consumer a customized product corresponding to the additional consumer profiling data and the selected product choice. In a preferred embodiment of the present invention, the computer-readable storage medium further comprises computer executable code for instructing a computer or similar functional device to perform the following additional steps: providing the consumer one or more specification options for the customized product; and receiving from the consumer instructions with respect to the one or more specification options for the customized product. The computer-readable storage medium might further preferably comprise instructions to perform, the following additional steps: providing the consumer one or more finishing options for the customized product; and receiving from the consumer instructions with respect to the one or more finishing options for the customized product.

Furthermore, Examiner maintains, that under "broadest reasonable interpretation" providing shampoo or lotion selected based on obtained personal information about the consumer, as disclosed in Maloney, constitutes "generating recommendations" for use of said products (P. 7, L. 11-15; P. 20, L. 17-19; P. 6, L. 15-17; Fig. 17). Furthermore, Maloney teaches (P. 16, L. 1-6) (emphases added):

Preferably, the consumer profile is continually updated during the consumer's interactions with the customized user interface. A list of recommended product choices which correspond to the updated consumer profile is then provided (40) to the consumer. The list of recommended product choices is compiled by a retrieving from a data repository, a list of predetermined product choices corresponding to the particular product category.

Further, **Applicant argues** that there is no suggestion to combine the references.

In response to this argument Examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, both references relate to providing personal care products or services to consumers based on demographic information. So as weather is a local phenomenon, determining and predicting local weather conditions based on determined location information can predict the impact of weather on sales of goods in said determined location (*Fox*; C. 4, L. 10-11, 58-61). As such, the motivation to combine references to include determining and predicting local weather conditions based on local information, as disclosed in *Fox*, would be utilizing local actual and forecasted weather information (e.g., temperature

and humidity) in planning of sales and advertising of personal care products to maximize profits.

3. Claims 32 and 34-40.

a. **Applicant argues** that Maloney does not disclose obtaining local information including a weather forecast.

In response to this argument it is noted, that Fox was applied for this feature. Specifically, Fox teaches a computer-implemented method and system for analysis of weather impact on a retail, personal care industry (C. 7, L. 65 - C. 8, L. 1), including collecting demographic (location) information about consumers (C. 9, L. 1-2, 19-22), and determining local weather information based on said demographic (location) information (C. 13, L. 3-8).

Further Applicant argues that Fox does not disclose "generating" feature.

In response to this argument it is noted, that Maloney teaches said "generating" feature (P. 7, L. 11-15; P. 16, L. 1-6; P. 20, L. 17-19; P. 6, L. 15-17; Fig. 17). To this end Examiner points out that applicant's arguments are directed against the references individually; but one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642

F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Further, **Applicant argues** that there is no suggestion to combine the references.

In response to this argument Examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, both references relate to providing personal care products or services to consumers based on demographic information. So as weather is a local phenomenon, determining and predicting local weather conditions based on determined location information can predict the impact of weather on sales of goods in said determined location (Fox; C. 4, L. 10-11, 58-61). As such, the motivation to combine references to include determining and predicting local weather conditions based on local information, as disclosed in Fox, would be utilizing local actual and forecasted weather information (e.g., temperature and humidity) in planning of sales and advertising of personal care products to maximize profits.

4. Claims 41 and 42.

Applicant argues that neither Maloney nor Fox nor any combination thereof, teaches or suggests "generating, by the computer system, at least one recommendation for use of at least one cosmetic product based on [local] information [obtained by manipulating demographic data]," as recited in claim 41.

In response to this argument it is noted that Maloney teaches providing the consumer with customized beauty care products, including shampoo, conditioner, lotion, facial cleanser, etc. (P. 7, L. 16, 24-26) based on obtained personal information about a consumer, the personal information including at least demographic information about the consumer, the demographic information reflecting a geographic area location of the subject (P. 6, L. 30 – P. 7, L. 3; P. 11, L. 18) and (P. 7, L. 11-15; P. 16, L. 2-6; P. 20, L. 17-19; P. 6, L. 15-17; Fig. 17).

Examiner stipulates, that under "broadest reasonable interpretation" providing shampoo or lotion selected based on obtained personal information about the consumer constitutes "generating recommendations" for use of said products. Furthermore, Maloney teaches (P. 16, L. 1-6) (emphases added):

Preferably, the consumer profile is continually updated during the consumer's interactions with the customized user interface. A list of recommended product choices which correspond to the updated consumer profile is then provided (40) to the consumer. The list of

recommended product choices is compiled by a retrieving from a data repository, a list of predetermined product choices corresponding to the particular product category.

Further, Fox was applied to show determining local (weather) information based on demographic (geographical) information. Specifically, Fox teaches a computer-implemented method and system for analysis of weather impact on a retail, personal care industry (C. 7, L. 65 - C. 8, L. 1), including collecting demographic (location) information about consumers (C. 9, L. 1-2, 19-22), and determining local weather information based on said demographic (location) information (C. 13, L. 3-8).

Further, **Applicant argues** that there is no suggestion to combine the references.

In response to this argument Examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, both references relate to providing personal care products or services to consumers based on demographic information. So as weather is a local phenomenon, determining and predicting local weather conditions based on determined location information can

predict the impact of weather on sales of goods in said determined location (Fox; C. 4, L. 10-11, 58-61). As such, the motivation to combine references to include determining and predicting local weather conditions based on local information, as disclosed in Fox, would be utilizing local actual and forecasted weather information (e.g., temperature and humidity) in planning of sales and advertising of personal care products to maximize profits.

5. Claims 43-47.

Applicant argues that Maloney and Fox fails to teach or suggest generating at least one cosmetic analysis based on at least one of the personal information and the local information.

In response to this argument it is noted that Maloney explicitly teaches this feature. Specifically, Maloney teaches that the obtained consumer profiling data, including personal information and local (environmental) information is analyzed to determine customized beauty care products for the consumer (P. 9, L. 5-9; P. 11, L. 6-15, 20).

Further, **Applicant argues** that there is no suggestion to combine the references.

In response to this argument Examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, both references relate to providing personal care products or services to consumers based on demographic information. So as weather is a local phenomenon, determining and predicting local weather conditions based on determined location information can predict the impact of weather on sales of goods in said determined location (*Fox*; C. 4, L. 10-11, 58-61). As such, the motivation to combine references to include determining and predicting local weather conditions based on local information, as disclosed in *Fox*, would be utilizing local actual and forecasted weather information (e.g., temperature and humidity) in planning of sales and advertising of personal care products to maximize profits.

6. Claims 49 and 50.

Applicant argues that neither *Maloney* nor *Fox* nor any combination thereof, teaches or suggests "generating at least one recommendation for use of at least one cosmetic product based on at least one of the personal information and the local information, which is based on demographic information and historical information associated with the geographic area."

In response to this argument it is noted that Maloney teaches providing the consumer with customized beauty care products, including shampoo, conditioner, lotion, facial cleanser, etc. (P. 7, L. 16, 24-26) based on obtained personal information about a consumer, the personal information including at least demographic information about the consumer, the demographic information reflecting a geographic area location of the subject (P. 6, L. 30 – P. 7, L. 3; P. 11, L. 18) and (P. 7, L. 11-15; P. 16, L. 2-6; P. 20, L. 17-19; P. 6, L. 15-17; Fig. 17).

Examiner stipulates, that under “broadest reasonable interpretation” providing shampoo or lotion selected based on obtained personal information about the consumer constitutes “generating recommendations” for use of said products. Furthermore, Maloney teaches (P. 16, L. 1-6) (emphases added):

Preferably, the consumer profile is continually updated during the consumer's interactions with the customized user interface. A list of recommended product choices which correspond to the updated consumer profile is then provided (40) to the consumer. The list of recommended product choices is compiled by a retrieving from a data repository, a list of predetermined product choices corresponding to the particular product category.

As per “local information is based on demographic information and historical information associated with the geographic area,” it is noted that Fox was applied for this feature. Specifically, Fox teaches a computer-implemented method and system for analysis of weather impact on a retail, personal care industry (C. 7, L. 65 - C. 8, L. 1),

including collecting demographic (location) information about consumers (C. 9, L. 1-2, 19-22), and determining local weather information based on said demographic (location) information (C. 13, L. 3-8).

Further, **Applicant argues** that there is no suggestion to combine the references.

In response to this argument Examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, both references relate to providing personal care products or services to consumers based on demographic information. So as weather is a local phenomenon, determining and predicting local weather conditions based on determined location information can predict the impact of weather on sales of goods in said determined location (Fox; C. 4, L. 10-11, 58-61). As such, the motivation to combine references to include determining and predicting local weather conditions based on local information, as disclosed in Fox, would be utilizing local actual and forecasted weather information (e.g., temperature and humidity) in planning of sales and advertising of personal care products to maximize profits.

D.

Argument:

The Rejection Under 35 U.S.C. § 103(a) Based On *Maloney*, *Fox*, and *Anderson* Should Be Reversed.

1. Claim 10.

a. Applicant argues that neither *Maloney* nor *Fox* nor any combination thereof, teaches or suggests “generating at least one recommendation for use of at least one cosmetic product based on at least one of the personal information and the local information, which is based on demographic information.”

In response to this argument it is noted that *Maloney* teaches providing the consumer with customized beauty care products, including shampoo, conditioner, lotion, facial cleanser, etc. (P. 7, L. 16, 24-26) based on obtained personal information about a consumer, the personal information including at least demographic information about the consumer, the demographic information reflecting a geographic area location of the subject (P. 6, L. 30 – P. 7, L. 3; P. 11, L. 18) and (P. 7, L. 11-15; P. 16, L. 2-6; P. 20, L. 17-19; P. 6, L. 15-17; Fig. 17).

Examiner stipulates, that under “broadest reasonable interpretation” providing shampoo or lotion selected based on obtained personal information about the consumer constitutes “generating recommendations” for use of said products. Furthermore, *Maloney* teaches (P. 16, L. 1-6) (emphases added):

Preferably, the consumer profile is continually updated during the consumer's interactions with the customized user interface. A list of recommended product choices which correspond to the updated consumer profile is then provided (40) to the consumer. The list of recommended product choices is compiled by a retrieving from a data repository, a list of predetermined product choices corresponding to the particular product category.

As per "local information is based on demographic information and historical information associated with the geographic area," it is noted that Fox was applied for this feature. Specifically, Fox teaches a computer-implemented method and system for analysis of weather impact on a retail, personal care industry (C. 7, L. 65 - C. 8, L. 1), including collecting demographic (location) information about consumers (C. 9, L. 1-2, 19-22), and determining local weather information based on said demographic (location) information (C. 13, L. 3-8).

Further, **Applicant argues** that there is no suggestion to combine the references.

In response to this argument Examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir.

1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, both references relate to providing personal care products or services to consumers based on demographic information. So as weather is a local phenomenon, determining and predicting local weather conditions based on determined location information can predict the impact of weather on sales of goods in said determined location (Fox; C. 4, L. 10-11, 58-61). As such, the motivation to combine references to include determining and predicting local weather conditions based on local information, as disclosed in Fox, would be utilizing local actual and forecasted weather information (e.g., temperature and humidity) in planning of sales and advertising of personal care products to maximize profits.

E.

Argument:

The Rejection Under 35 U.S.C. § 103(a) Based On *Maloney*, *Fox*, and *Farchione* Should Be Reversed.

1. Claims 14-16, 28, 29, and 33.

a. Applicant argues that neither *Maloney* nor *Fox* nor any combination thereof, teaches or suggests “generating at least one recommendation for use of at least one cosmetic product based on at least one of the personal information and the local information, which is based on demographic information.”

In response to this argument it is noted that Maloney teaches providing the consumer with customized beauty care products, including shampoo, conditioner, lotion, facial cleanser, etc. (P. 7, L. 16, 24-26) based on obtained personal information about a consumer, the personal information including at least demographic information about the consumer, the demographic information reflecting a geographic area location of the subject (P. 6, L. 30 – P. 7, L. 3; P. 11, L. 18) and (P. 7, L. 11-15; P. 16, L. 2-6; P. 20, L. 17-19; P. 6, L. 15-17; Fig. 17).

Examiner stipulates, that under “broadest reasonable interpretation” providing shampoo or lotion selected based on obtained personal information about the consumer constitutes “generating recommendations” for use of said products. Furthermore, Maloney teaches (P. 16, L. 1-6) (emphases added):

Preferably, the consumer profile is continually updated during the consumer's interactions with the customized user interface. A list of recommended product choices which correspond to the updated consumer profile is then provided (40) to the consumer. The list of recommended product choices is compiled by a retrieving from a data repository, a list of predetermined product choices corresponding to the particular product category.

As per “local information is based on demographic information and historical information associated with the geographic area,” it is noted that Fox was applied for this feature. Specifically, Fox teaches a computer-implemented method and system for analysis of weather impact on a retail, personal care industry (C. 7, L. 65 - C. 8, L. 1), including collecting demographic (location) information about consumers (C. 9, L. 1-2,

19-22), and determining local weather information based on said demographic (location) information (C. 13, L. 3-8).

Further, **Applicant argues** that there is no suggestion to combine the references.

In response to this argument Examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, both references relate to providing personal care products or services to consumers based on demographic information. So as weather is a local phenomenon, determining and predicting local weather conditions based on determined location information can predict the impact of weather on sales of goods in said determined location (Fox; C. 4, L. 10-11, 58-61). As such, the motivation to combine references to include determining and predicting local weather conditions based on local information, as disclosed in Fox, would be utilizing local actual and forecasted weather information (e.g., temperature and humidity) in planning of sales and advertising of personal care products to maximize profits.

F.

Argument:

The Rejection Under 35 U.S.C. § 103(a) Based On *Maloney*, *Fox*, and *Official Notice* Should Be Reversed.

1. Claim 19.

a. Applicant argues that “Official Notice is not supported by a documentary evidence and is provided without a clear and unmistakable technical line of reasoning supporting the Official Notice”.

In response to this argument it is noted that Official Notice was, in fact, supported by a documentary evidence. Specifically, Official Notice was taken that it was old and well known that a plurality of consumers had a habit to use cosmetic product every day. The documentary evidence used was Ogilvie et al.: *Why Women Wear Lipstick: Preliminary Findings*; page 4, 5th paragraph.

As per **Applicant's argument** that there is no suggestion to combine *Maloney* and *Fox* and *Official Notice*, it is noted that if it is old and well known that consumers had a habit to use cosmetic products every day, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify *Maloney* in view of *Fox* to include *suggesting* that the consumer maintain a stock of the plurality of

cosmetic products, because it would advantageously allow the consumer never run out of cosmetic products especially when the consumer needs them the most.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/IGOR BORISSOV/

Primary Examiner, Art Unit 3628

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John W. Hayes, SPE 3628

/JOHN W HAYES/

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Vincent Millin, Appeals Practice Specialist /vm/